

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JIMMY TOBIAS,)	
1336 N Cranbrook Rd.)	
Bloomfield Village, MI 48301)	
)	
Plaintiff,)	Case No. 1:18-cv-2917
)	
v.)	
)	
UNITED STATES DEPARTMENT OF)	
INTERIOR, OFFICE OF THE SECRETARY,)	
1849 C Street NW)	
Washington, DC 20240)	
)	
Defendant.)	

COMPLAINT

1. Plaintiff JIMMY TOBIAS brings this suit to overturn Defendant UNITED STATES DEPARTMENT OF INTERIOR, OFFICE OF THE SECRETARY's failure to timely respond to TOBIAS' FOIA requests.

PARTIES

2. Plaintiff JIMMY TOBIAS is an independent reporter with Pacific Standard magazine and The Guardian, and is the FOIA requester in this case.

3. Defendant DEPARTMENT OF INTERIOR (DOI) is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

4. This case is brought under 5 U.S.C. § 552(a)(6)(c)(i) and presents a federal question conferring jurisdiction on this Court.

5. Venue is proper under 5 U.S.C. § 552(a)(4)(B) because this District is always a permissible venue for federal FOIA suits.

MAY 9 REQUEST (SKIPWITH ESA COMMS)

6. On May 9, 2018, TOBIAS requested "[a]ll written or electronic communications, including attachments, sent or received by Deputy Assistant Secretary Aurelia Skipwith, or her executive assistant, that contain one or more of the following words or phrases: "Endangered Species Act", "ESA", "endangered species", "threatened species", "migratory bird", "MBTA", "sage grouse", "Texas hornshell", "sagebrush lizard", "incidental take", "4(d) rule" and/or "4(d)". This request pertains to records produced between January 1, 2018 and the date this request is processed." Ex. A.

7. On May 22, 2018, DOI acknowledged receipt of the request and took a 10-day extension. Ex. A. However, TOBIAS did not receive the acknowledgement until October 23, 2018 because it was originally sent to the wrong email address.

8. Between May and November, 2018, TOBIAS contacted DOI numerous times for an update, but DOI never provided an update or responded at all other than to provide him with the acknowledgement on October 23, 2018.

9. As of the date of filing, DOI has produced no responsive records.

JULY 23 REQUEST (COMBS BURYING BEETLE)

10. On July 23, 2018, TOBIAS requested "[a]ny and all written or electronic communications, including attachments, sent or received by Susan Combs, Acting Assistant Secretary for Fish, Wildlife and Parks, that contain one or more of the following words or phrases: "American burying beetle", "burying beetle", "beetle", "Texas Public Policy Foundation", "TPPF",

"Robert Henneke", and/or "Henneke". This request seeks documents produced between April 1, 2018 and the date this request is processed." Ex. B.

11. On July 25, 2018, DOI acknowledged receipt of the request and took a 10-day extension. Ex. B.

12. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never provided an update or responded at all.

13. As of the date of filing, DOI has produced no responsive records.

JULY 23 REQUEST (COMBS IPAA)

14. On July 23, 2018, TOBIAS requested "[a]ny and all written or electronic communications, including attachments, between Susan Combs, Acting Assistant Secretary for Fish, Wildlife and Parks, and any agent, representative, lobbyist or executive affiliated with the Independent Petroleum Association of America, or IPAA. This request also seeks any communications, including attachments, between Ms. Combs and any email address that ends in @ipaa.org." Ex. C.

15. On July 25, 2018, DOI acknowledged receipt of the request and took a 10-day extension. Ex. C.

16. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never provided an update or responded at all.

17. As of the date of filing, DOI has produced no responsive records.

AUGUST 3 REQUEST (WILLIAMS SUTHERLAND COMMS)

18. On August 3, 2018, TOBIAS requested "[a]ny and all written or electronic communications, including attachments, between deputy director of external affairs Tim Williams, or his executive assistant(s), and any agent, representative or employee of the Sutherland Institute, a

Utah-based think tank. This request includes any and all communications between Williams, or his executive assistant, and any email address that ends in "@sifreedom.org". This request also seeks any communication between Tim Williams (or his assistant Jason Funes) and Sutherland Institute employee Matthew Anderson. This request seeks records produced between April 1, 2017 and the date this request is processed." Ex. D.

19. On August 31, 2018, DOI acknowledged receipt of the request and took a 10-day extension. Ex. D.

20. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never provided an update or responded at all.

21. As of the date of filing, DOI has produced no responsive records.

AUGUST 6 REQUEST (DEVITO SPR)

22. On August 6, 2018, TOBIAS requested "[a]ny and all written or electronic communications, including attachments, sent or received by political appointee Vincent DeVito that contain one or more of the following words or phrases: "stream protection rule", "SPR", "OS-MRE", "crayfish", "crawfish", "Peabody", "Arch", "Bostic", and/or "Murray". This request seeks documents produced between January 20, 2017 and the date this request is processed." Ex. E.

23. On August 10, 2018, DOI acknowledged receipt of the request and took a 10-day extension. Ex. E.

24. Over the next couple months, TOBIAS contacted DOI numerous times for an update.

25. On October 11, 2018, DOI requested that TOBIAS contact a FOIA officer to discuss the request.

26. TOBIAS contacted the FOIA officer and agreed to narrow the request.

27. As of the date of filing, DOI has produced no responsive records.

AUGUST 6 REQUEST (MAGALLANES SPR)

28. On August 6, 2018, TOBIAS requested "[a]ny and all written or electronic communications, including attachments, sent or received by political appointee Downey Magallanes that contain one or more of the following words or phrases: "stream protection rule", "SPR", "OSMRE", "Peabody", and/or "Murray". This request seeks documents produced between January 20, 2017 and June 1, 2017." Ex. F.

29. On August 10, 2018, DOI acknowledged receipt of the request and took a 10-day extension. Ex. F.

30. Over the next few months, TOBIAS contacted DOI numerous times for an update, but DOI never provided an update or responded at all.

31. As of the date of filing, DOI has produced no responsive records.

AUGUST 7 REQUEST (WILLIAMS AFP COMMS)

32. On August 7, 2018, TOBIAS requested "[a]ny and all written or electronic communications, including attachments, between deputy director of external affairs Tim Williams, or his executive assistant(s), and any agent, representative or employee of Americans For Prosperity, the conservative political advocacy group. This request includes any and all communications between Williams, or his executive assistant Jason Funes, and any email address that ends in '@afphq.org'. This request seeks records produced between April 1, 2017 and the date this request is processed." Ex. G.

33. On September 10, 2018, DOI acknowledged receipt of the request and took a 10-day extension. Ex. G.

34. Over the following months, TOBIAS contacted DOI numerous times for an update, but DOI never provided an update or responded at all.

35. As of the date of filing, DOI has produced no responsive records.

AUGUST 16 REQUEST (CHAMBERS BRIEFING)

36. On August 16, 2018, TOBIAS requested "[a]ll binders and briefing books prepared for political appointee Micah Chambers." Ex. H.

37. As of the date of filing, DOI has not even acknowledged receipt of the request, let alone produced any responsive records.

AUGUST 17 REQUEST (DEVITO IPAA COMMS)

38. On August 17, 2018, TOBIAS requested "[a]ny and all written or electronic communications, including attachments, between DOI appointee Vincent DeVito, and any agent, representative, lobbyist or executive affiliated with the Independent Petroleum Association of America, or IPAA. This request also seeks any communications, including attachments, between Mr. DeVito and any email address that ends in @ipaa.org." Ex. I.

39. On August 21, 2018, DOI acknowledged receipt of the request and took a 10-day extension. Ex. I.

40. Over the following months, TOBIAS contacted DOI numerous times for an update, but DOI never provided an update or responded at all.

41. As of the date of filing, DOI has produced no responsive records.

AUGUST 20 REQUEST (MACGREGOR DRAFT BE SPR)

42. On August 20, 2018, TOBIAS requested "[a]ny and all written or electronic communications, including attachments, sent or received by political appointee Katharine Mac-

Gregor that relate or refer to the draft biological evaluation of the stream protection rule withdrawal." Ex. J.

43. On September 4, 2018, DOI acknowledged receipt of the request and took a 10-day extension. Ex. J.

44. Over the following months, TOBIAS contacted DOI numerous times for an update, but DOI never provided an update or responded at all.

45. As of the date of filing, DOI has produced no responsive records.

AUGUST 23 REQUEST (JORJANI TWIN METALS)

46. On August 23, 2018, TOBIAS requested "[a]ny and all documents and written and electronic correspondence, including attachments, concerning Principal Deputy Solicitor Daniel Jorjani's meetings with any employees or representatives of the mining firm Twin Metals Minnesota at any point since May 15, 2017. This request also seeks documents brought to meetings involving Mr. Jorjani and Twin Metals Minnesota, copies of any documents describing the substance and contents of any of these meetings, & copies of any emails related to any such meetings." Ex. K.

47. On September 5, 2018, DOI acknowledged receipt of the request. Ex. K.

48. Over the following months, TOBIAS contacted DOI numerous times for an update, but DOI never provided an update or responded at all.

49. As of the date of filing, DOI has produced no responsive records.

SEPTEMBER 12 REQUEST (BALLARD OS COMMS)

50. On September 12, 2018, TOBIAS requested "[a]ny and all written or electronic communications, including attachments, between any agent, representative or employee of the Florida-based lobbying firm Ballard Partners and any one or more of the following DOI officials:

Secretary Ryan Zinke, Deputy Secretary David Bernhardt, Chief of Staff Scott Hommel, Deputy Chief of Staff Katharine MacGregor, former Deputy Chief of Staff Downey Magallanes, Director of External Affairs Todd Wynn, Deputy Director of External Affairs Timothy Williams, or any of these officials' executive assistants. This request includes all correspondence between the aforementioned Interior Department officials and any person with an email address ending in "@ballardfl.com" This request pertains to documents produced between June 1, 2017 and the date this request is processed." Ex. L.

51. As of the date of filing, DOI has not even acknowledged receipt of the request, let alone produced any responsive records.

COUNT I – DOI'S MAY 9 (SKIPWITH ESA COMMS) VIOLATION OF FOIA

52. The above paragraphs are incorporated by reference.

53. Defendant DOI is an agency subject to FOIA.

54. The requested records are not exempt under FOIA.

55. DOI has refused to produce the requested records in a timely manner.

COUNT II – DOI'S JULY 23 (COMBS BURYING BEETLE) VIOLATION OF FOIA

56. The above paragraphs are incorporated by reference.

57. Defendant DOI is an agency subject to FOIA.

58. The requested records are not exempt under FOIA.

59. DOI has refused to produce the requested records in a timely manner.

COUNT III – DOI'S JULY 23 (COMBS IPAA) VIOLATION OF FOIA

60. The above paragraphs are incorporated by reference.

61. Defendant DOI is an agency subject to FOIA.

62. The requested records are not exempt under FOIA.

63. DOI has refused to produce the requested records in a timely manner.

**COUNT IV – DOI’S AUGUST 3 (WILLIAMS SUTHERLAND COMMS)
VIOLATION OF FOIA**

64. The above paragraphs are incorporated by reference.

65. Defendant DOI is an agency subject to FOIA.

66. The requested records are not exempt under FOIA.

67. DOI has refused to produce the requested records in a timely manner.

COUNT V – DOI’S AUGUST 6 (DEVITO SPR) VIOLATION OF FOIA

68. The above paragraphs are incorporated by reference.

69. Defendant DOI is an agency subject to FOIA.

70. The requested records are not exempt under FOIA.

71. DOI has refused to produce the requested records in a timely manner.

COUNT VI – DOI’S AUGUST 6 (MAGALLANES SPR) VIOLATION OF FOIA

72. The above paragraphs are incorporated by reference.

73. Defendant DOI is an agency subject to FOIA.

74. The requested records are not exempt under FOIA.

75. DOI has refused to produce the requested records in a timely manner.

COUNT VII – DOI’S AUGUST 7 (WILLIAMS AFP COMMS) VIOLATION OF FOIA

76. The above paragraphs are incorporated by reference.

77. Defendant DOI is an agency subject to FOIA.

78. The requested records are not exempt under FOIA.

79. DOI has refused to produce the requested records in a timely manner.

COUNT VIII – DOI’S AUGUST 16 (CHAMBERS BRIEFING) VIOLATION OF FOIA

80. The above paragraphs are incorporated by reference.

- 81. Defendant DOI is an agency subject to FOIA.
- 82. The requested records are not exempt under FOIA.
- 83. DOI has refused to produce the requested records in a timely manner.

COUNT IX – DOI’S AUGUST 17 (DEVITO IPAA COMMS) VIOLATION OF FOIA

- 84. The above paragraphs are incorporated by reference.
- 85. Defendant DOI is an agency subject to FOIA.
- 86. The requested records are not exempt under FOIA.
- 87. DOI has refused to produce the requested records in a timely manner.

**COUNT X – DOI’S AUGUST 20 (MACGREGOR DRAFT BE SPR)
VIOLATION OF FOIA**

- 88. The above paragraphs are incorporated by reference.
- 89. Defendant DOI is an agency subject to FOIA.
- 90. The requested records are not exempt under FOIA.
- 91. DOI has refused to produce the requested records in a timely manner.

COUNT XI – DOI’S AUGUST 23 (JORJANI TWIN METALS) VIOLATION OF FOIA

- 92. The above paragraphs are incorporated by reference.
- 93. Defendant DOI is an agency subject to FOIA.
- 94. The requested records are not exempt under FOIA.
- 95. DOI has refused to produce the requested records in a timely manner.

COUNT XII – DOI’S SEPTEMBER 12 (BALLARD OS COMMS) VIOLATION OF FOIA

- 96. The above paragraphs are incorporated by reference.
- 97. Defendant DOI is an agency subject to FOIA.
- 98. The requested records are not exempt under FOIA.
- 99. DOI has refused to produce the requested records in a timely manner.

WHEREFORE, Plaintiff asks the Court to:

- i. Order Defendant to produce the requested records;
- ii. Award Plaintiff attorney fees and costs; and
- iii. Enter any other relief the Court deems appropriate.

Dated: December 12, 2018

RESPECTFULLY SUBMITTED,

/s/ Joshua Hart Burday

Attorneys for Plaintiff
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